

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

DEONDRE WILLIAMS, et al.,

Defendants.

Case No. 2:14-cr-00099-APG-PAL

REPORT OF FINDINGS AND  
RECOMMENDATION

(Mtn to Dismiss – Dkt. #36)

This matter is before the court on Defendant Deondre Williams' Motion to Dismiss Based on Outrageous Government Conduct and/or Pursuant to the Court's Supervisory Powers (Dkt. #36) filed July 28, 2014, which was referred to the undersigned for a report of findings and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. The court has considered the Motion, the government's consolidated Response (Dkt. #39) filed August 19, 2014, and Williams' Reply (Dkt. #44) filed August 26, 2014.

**BACKGROUND**

**I. Procedural History.**

On March 6, 2014, Williams was charged in a criminal Complaint (Dkt. #1) with two co-Defendants, Von White and Michael Knapp, with conspiracy to interfere with commerce by robbery in violation of 18 U.S.C. § 1951(b)(3); conspiracy to possess with the intent to distribute controlled substances (cocaine and methamphetamine) in violation of 21 U.S.C. §§ 841(a) and (b)(1)(B)(ii)(II), (b)(1)(A)(viii), and 846; possession of a firearm in furtherance of a drug trafficking crime and a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(i); and felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Williams made an

1 initial appearance on the Complaint on March 6, 2014, was appointed counsel, entered a not  
2 guilty plea, and submitted to detention pending trial. *See* Minutes of Proceedings (Dkt. #3);  
3 Order Appointing Counsel (Dkt. #9); Order of Detention (Dkt. #13).

4 On March 18, 2014, a federal grand jury returned an Indictment (Dkt. #16) against  
5 Williams and his co-Defendants, charging Williams with conspiracy to interfere with commerce  
6 by robbery in violation of 18 U.S.C. § 1951(b)(3); conspiracy to possess with the intent to  
7 distribute controlled substances (cocaine and methamphetamine) in violation of 21 U.S.C.  
8 §§ 841(a) and (b)(1)(B)(ii)(II), (b)(1)(A)(viii), and 846; possession of a firearm in furtherance of  
9 a drug trafficking crime and a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(i); and  
10 felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Williams  
11 was arraigned on the Indictment and entered a not guilty plea to the charges on March 27, 2014.  
12 *See* Minutes of Proceedings (Dkt. #21). Trial is currently scheduled December 1, 2014. *See*  
13 Order to Continue (Dkt. #46).

14 The criminal complaint and Indictment arise out of an ATF undercover investigation of  
15 Co Defendant White which resulted in a reverse sting operation that resulted in charges brought  
16 against all three Defendants.

## 17 **II. The Parties' Positions.**

### 18 **A. Williams' Motion to Dismiss (Dkt. #36).**

19 Williams argues the Indictment should be dismissed because the government's conduct in  
20 manufacturing the fictional stash house robbery from whole cloth was outrageous, and the  
21 Defendants "merely hitched a ride on a moving train" and were misled, deceived, and induced by  
22 the government in a "constitutionally-repugnant fashion" to commit the crimes charged in the  
23 Indictment. Williams acknowledges the "extremely high standard" he must meet to show  
24 outrageous government conduct, but argues this case is analogous to *United States v. Hudson*, 3  
25 F. Supp. 3d 772 (C.D. Cal. 2014), where the indictment in another stash house robbery case was  
26 dismissed for outrageous government conduct. Like the defendant in *Hudson*, Williams asserts  
27 that he and his co-Defendants merely "responded to the government's script in this street  
28 drama."

1           When Williams accompanied Knapp and White to the February 25, 2014, meeting with  
2 the undercover Bureau of Alcohol, Tobacco and Firearms (“ATF”) agent, he had never been  
3 charged with or convicted of a stash house robbery. Williams played no independent role in  
4 planning the crime; and like the defendant in *Hudson*, he was along for the ride, anticipating an  
5 easy payday. Rather, ATF agents were directly and continuously involved in planning and  
6 directing the criminal activity, and they enticed Williams into participating with the promise of  
7 proceeds from the stash house robbery. For example, the government provided the meeting  
8 places and location of the fake stash house, assisted in procuring weapons, and otherwise  
9 engineered the fake crime.

10           Williams asserts that he was not involved in any ongoing criminal activity when he was  
11 targeted in the ATF’s reverse sting, nor had he ever engaged in, been suspected of, or  
12 participated in the planning of a stash house robbery. His criminal record is also devoid of any  
13 prior convictions for drug trafficking. Williams acknowledges that the Ninth Circuit does not  
14 require that the government have individualized suspicion of a defendant’s wrongdoing before  
15 conducting an undercover investigation but asserts that it is a relevant consideration. Here, the  
16 government had no reason to suspect Williams either before or after conducting a records check  
17 on him after the February 25, 2014, meeting. In addition, without the government’s  
18 involvement, no crime would have been contemplated or committed by Williams. Furthermore,  
19 the government did not remove any drugs or make the streets of Las Vegas safer in prosecuting  
20 these Defendants.

21           Furthermore, the government pressured, coerced, and pled with the Defendants to commit  
22 the crime by appealing to their financial need, and “the loud knock of opportunity was simply  
23 too tempting to pass up.” Williams argues ATF Task Force Officer Larios used the rapport he  
24 established with co-Defendant White during a series of controlled firearms purchases to induce  
25 him into committing fake crimes that he assured White were “easy scores.” He asserts Larios’  
26 conduct went beyond encouragement when he said things including making sure the Defendants  
27 were “down for it” because it was Larios’ “ass on the line;” asking if the Defendants had the  
28 tools for the job and telling them he would secure a rental car; describing the robbery as a “good

1 come up” and saying he needed to find “the right guys” for the job; informing the Defendants he  
2 had someone who would pay cash for the drug proceeds; informing the Defendants he wanted to  
3 “make sure everything goes cool;” telling the Defendants the proceeds from the robbery would  
4 be “split down the middle;” telling them to do whatever they have to; and informing them this  
5 robbery was a “tryout,” and if it went well he would have more “work down the road,” and he  
6 would keep the Defendants on “retainer.”

7 Williams asserts that any boasting he did about his past criminal exploits was false and  
8 exaggerated and motivated by the promise of a large payout. He asserts that Larios’ conduct in  
9 ensuring the Defendants brought weapons with them was undertaken simply to enhance the  
10 Defendants’ culpability and set them up for longer prison sentences. TFO Larios and ATF  
11 manufactured this entire sting, and the Defendants could not have committed the crime without  
12 the constant direction and support of the government. Williams had no desire, means,  
13 wherewithal, or experience to engage in this conduct, and he was manipulated by White and the  
14 government to participate.

15 Alternatively, Williams argues the court should dismiss the Indictment pursuant to its  
16 supervisory powers to prevent the government from reaping benefits from its misconduct, even  
17 where that misconduct falls short of a due process violation.

18 **B. The Government’s Response (Dkt. #39).**

19 The government argues that dismissal for outrageous government conduct may be  
20 invoked only when the government’s conduct is so grossly shocking and outrageous to violate  
21 the universal sense of justice. This is an extremely high standard. In *Black*, the Ninth Circuit  
22 recognized that there are only two reported appellate court decisions that have reversed  
23 convictions for outrageous government conduct. In *Black*, the Ninth Circuit stressed that each  
24 case must be judged on its own particular facts. Applying the *Black* factors, the government  
25 argues Williams cannot meet the extremely high standard for dismissal of the Indictment for  
26 outrageous government conduct. The government contends the court must apply the *Black*  
27 factors to the investigation as a whole and not to each Defendant individually.

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1 First, the government had individualized suspicion of co-Defendant White's wrongdoing  
2 and had purchased numerous firearms from White, many of which were stolen. The government  
3 was also aware of White's criminal history, and White had discussed his prior crimes with the  
4 confidential informant ("CI") and undercover agent. The government became aware of Knapp  
5 and Williams when White brought them to the February 25, 2014, meeting. After learning their  
6 identities, ATF learned of their criminal histories. ATF also learned that Williams was with  
7 White when White was shot multiple times on June 21, 2013, by two males who accused White  
8 of planning to rob them.

9 Second, the government concedes that ATF "set the bait" in this case, invented the basic  
10 scenario, and decided what amount of drugs was involved. However, all three Defendants  
11 responded without further inducement by the government, and White, not the ATF, recruited  
12 Williams and Knapp. In addition, all three Defendants boasted about their past criminal exploits.  
13 Although the government is entitled to rely on the Defendants' representations of their past  
14 criminal conduct in this case, ATF agents also obtained the Defendants' criminal histories which  
15 verified their prior violent felony convictions.

16 Third, the government did not coerce or pressure the Defendants to commit the robbery.  
17 Although it proposed the robbery, Defendants "eagerly jumped at the opportunity." Fourth, the  
18 entire reverse sting operation consisted of four meetings—one with White alone and three with  
19 all three Defendants. Once the scheme was initiated, the government played a minimal role in  
20 the crime. It did not provide weapons or difficult-to-obtain materials.

21 In *Black*, the Ninth Circuit recognized that stash house robberies are largely unreported  
22 crimes that propose a great risk of violence in residential communities. The nature of stash  
23 house robberies warrants employing this sort of investigation tactic, and the ATF did not  
24 randomly recruit people in lower income neighborhoods to commit the fictional robbery. White  
25 was already selling guns to the undercover agent, and all three Defendants had convictions for  
26 violent felonies and told the government agent "early and often" that they had committed similar  
27 crimes. Furthermore, the government did not recruit Knapp and Williams; White did. Finally,  
28 all of the undercover meetings were recorded to prove what was actually said and done.

1 With respect to Williams' alternative request that the court dismiss the Indictment under  
2 its supervisory powers, the government argues that none of the factors recognized by the Ninth  
3 Circuit exist in this case. A court may only use its supervisory powers to dismiss an indictment  
4 (1) to remedy a Constitutional or statutory violation, (2) to protect judicial integrity by ensuring  
5 that a conviction rests on appropriate considerations before a jury, or (3) to deter future illegal  
6 conduct. Knapp has not established any evidence of illegal or improper government conduct.

7 **C. Williams' Reply (Dkt. #44).**

8 Williams replies that the government has not met its burden to show its conduct was not  
9 outrageous. Williams argues that the government's Response illustrates the lack of its  
10 individualized suspicion of Williams. Additionally, the government targeted White in an  
11 economically-disadvantaged neighborhood heavily populated by African-Americans, and it  
12 induced Knapp and Williams—two novices who had little to do with planning the robbery—into  
13 participating. Williams asserts that he and Knapp were only present for two of the nine meetings  
14 held with the Defendants and the government, and by the time they began attending those  
15 meetings, “much of the nuts and bolts discussion of the robbery had already taken place.” The  
16 scheme was created by the government, the CI, and White.

17 Williams asserts that the court should alternatively dismiss the Indictment under its  
18 supervisory powers. First, he argues the government's conduct in this case “teetered perilously  
19 close” to violating the Fourth and Fifth Amendment rights of Knapp and Williams—two young  
20 African-American men, living in economically-challenging conditions with “non-existent job  
21 prospects and an eagerness to prove [their] worth to allegedly higher players.” Second, he  
22 asserts that allowing these “runaway prosecutions” to result in convictions undermines judicial  
23 integrity because it “irrevocably undermines confidence in the judicial system” and its primary  
24 goal of providing equal justice under the law. Williams asserts that he and Knapp had less to do  
25 with the fictional stash house robbery than the investigators who planned it, and to allow them to  
26 be convicted would be a manifest injustice. Finally, Williams argues that the Indictment in this  
27 case should be dismissed to deter law enforcement agencies from running amuck, and affirming

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1 the reverse sting tactic used here would invite them to simply create more crimes rather than  
2 investigate existing ones.

### 3 **DISCUSSION**

4 The arguments raised in the Motion, Response, and Reply are all derived from facts  
5 gleaned from the discovery produced in this case, including audio and video recorded meetings  
6 between one or more of the Defendants and undercover officers and/or the CI. Both sides ask  
7 the court to draw different conclusions from the same information but do not fundamentally  
8 dispute what occurred in terms of the course of the investigation or the events leading up to  
9 Williams' arrest.

#### 10 **I. Statement of Uncontested Facts**

11 In October 2013, the ATF opened an investigation into co-Defendant Von White, a  
12 convicted felon. An ATF CI told his ATF handler that White had firearms to sell. White sold  
13 the CI eleven firearms in a series of controlled buys on October 24, 2013, November 5, 2013,  
14 December 5, 2013, December 13, 2013, January 10, 2014, and January 28, 2014, all of which  
15 were surveilled and monitored by ATF agents. During all of these transactions, the CI was  
16 provided with video and audio equipment that recorded the conversations. These recordings  
17 have been transcribed and provided to defense counsel in discovery.

18 On November 5, 2013, the CI conducted a controlled purchase of a stolen handgun from  
19 White. During the sale, White made statements to the effect that he knew young men who were  
20 "hungry," who would "kill a . . . for, like, two grand."

21 On December 13, 2013, the CI bought two more handguns from White, one of which was  
22 stolen. The government claims, and Williams does not dispute, that on January 6, 2014, the CI  
23 told ATF agents that he had an unrecorded conversation with White on January 2, 2014. White  
24 was with another individual who had multiple felony convictions in Nevada, including robbery,  
25 second degree murder, and trafficking a controlled substance. The CI told ATF that White had  
26 acted as a driver and lookout during a recent armed home invasion of a local methamphetamine  
27 dealer. The CI reported to ATF that White claimed the victim of the home invasion robbery  
28 revealed where his drug money was located after the robbers threatened to shoot the victim's

1 dog. The CI reported that White had a large stack of currency and that White said it was his  
2 share of the home invasion robbery. The CI also reported that the second man with White told  
3 the CI that he had “rah rahs” available to handle any “business” the CI may have.

4 On January 10, 2014, White sold the CI and undercover ATF Task Force Officer  
5 Detective Larios three guns, including a stolen handgun, which ATF investigators later  
6 determined belonged to the victim of a 2008 homicide in Phoenix, Arizona. The ATF did not  
7 launch its reverse sting operation until after Larios accompanied the CI to this January 10, 2014,  
8 meeting.

9 **A. January 28, 2014, Meeting.**

10 On January 28, 2014, the CI and Larios made an additional controlled purchase of a  
11 handgun and 12 gauge shotgun from White. During this purchase, Larios told White that he had  
12 some “heavy lifting” for White, who responded he was in the “construction business.” Larios  
13 told White that he needed the “NFL,” not “junior varsity.” White responded that “my dudes are  
14 Hall of Fame.” An agreement was made to meet in the near future to discuss the “heavy lifting.”

15 **B. February 12, 2014, Meeting.**

16 On February 12, 2014, White met with the CI and Larios at a Las Vegas restaurant.  
17 Larios told White that he worked as a courier, delivering drugs he would pick up from the  
18 fictional stash house. *See* Transcript of February 12, 2014, Meeting at 10, attached as Exhibit 1  
19 to the government’s Response. Larios told White the house was guarded by two “Mexican  
20 dudes,” one of whom was armed with a “strap” [gun] in his waistband. *Id.* at 10, 13. Larios said  
21 there were up to four kilos of cocaine and eight to ten pounds of methamphetamine, and  
22 suggested a home invasion robbery. Larios asked White to promise him, “if you ain’t down to  
23 do this shit, bro, no harm no foul. Fucking forget we ever had this fucking conversation and . . .  
24 .” *Id.* at 11. White responded that before they went into more detail, he was “with it all the  
25 way” but asked Larios if he wanted the two individuals guarding the stash house “executed or do  
26 they live? I don’t give a fuck.” *Id.* Larios asked White if he was “sure you’re down for this  
27 shit.” *Id.* White responded “yeah. That shit . . . that’s . . . what I do.” *Id.* at 13.

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1 Larios and White continued to discuss the details of a potential stash house robbery and  
2 Larios eventually asked White if he had “done this shit before.” *Id.* at 18. White responded,  
3 “you can Google me. Google my criminal record. And it show you nothing’ but kidnap,  
4 robbery. Robbery, robbery, robbery, robbery, robbery. That’s what I do. It’s how I was raised.”  
5 *Id.* Larios specifically asked whether White had done a stash house robbery before, and White  
6 responded that he preferred to do them to “stay out of the fed’s way” and “‘cause what they [the  
7 victims] gonna do, call the cops, you know.” *Id.* at 19. After further conversation, White  
8 professed to be a “drug dealing robber.” *Id.* at 20. Larios told White that if he could not sell the  
9 drug proceeds, Larios had “his own people.” *Id.* Larios said he could not do the robbery with  
10 the CI because the “Mexican dudes” had seen the CI with Larios. *Id.* White responded he had  
11 two people who could help. *Id.* at 21. White also said he had “two little brothers” who were in  
12 their “prime,” who liked to do home invasion robberies, and had “the tools.” *Id.* at 21-29.  
13 Larios insisted on meeting them. *Id.* at 21.

14 White also claimed that he had been shot seven times in front of his apartment by two  
15 men. *Id.* at 31-33. After the February 12, 2014, meeting, ATF agents investigated and learned  
16 that on June 21, 2013, White had been shot multiple times outside of his apartment. The police  
17 report of the incident indicates that the men who shot White believed White was discussing  
18 robbing the men. *See* Police Report, attached as Exhibit 2 to the government’s Response. The  
19 police report also indicates that White said a friend was with him during the incident but did not  
20 recall if it was Deondre Williams or “Jay Dubb.” *Id.* at p 2.

21 **C. February 25, 2014, Meeting.**

22 Larios set up a meeting with White on February 25, 2014, at the South Point Hotel &  
23 Casino. White brought co-Defendants Williams and Knapp to the meeting. The transcript of the  
24 recorded conversation indicates Larios asked Williams and Knapp if White had told them why  
25 Larios wanted to meet with them. *See* Transcript of February 25, 2014, Meeting at 4, attached as  
26 Exhibit 3 to government’s Response. Larios explained that he did deliveries and needed the  
27 Defendants to rob a stash house. *Id.* Williams responded, “You picked the right people” and  
28 stated that the biggest question he had was “the point of entry. How will we get in?” *Id.* at 15.

1 Larios told the Defendants that there would be three to four kilos of cocaine and eight to  
2 ten pounds of methamphetamine in the stash house, and the house was guarded by two Mexican  
3 dudes, one of whom has a “strap” tucked in the waistband of his pants. *Id.* at 5-6. Williams  
4 observed and asked, “There’s three of us and two of them, you know what I mean. But which . .  
5 . which . . . which one of them is going to be carrying?” *Id.* at 8. White said he had discussed  
6 the plan to rob the stash house with Knapp and Williams in the car on the way to the South Point,  
7 and they had decided they were “gonna do the zip tie route. Woo, woo, woo . . . zip tie your  
8 hands, zip everybody up, a couple stomach shots, maybe give you some body shots.” *Id.* at 6-7.  
9 When Larios expressed nervousness about the robbery, Williams reassured him that “it’s better  
10 to be nervous. That means you’re on your feet . . . . If you’re not then that means you’re slipping  
11 somewhere. . . . I’d rather cope with somebody who’s nervous because that means you thought  
12 about everything. You’re thinking everything through.” *Id.* at 10. Larios stated he did not think  
13 there would be cash at the fictional stash house, but if there were, the proceeds would be “split in  
14 half.” *Id.* at 12. Despite this, Williams stated, “Man, I thought about this, you know what I  
15 mean, so it’s like something that I want, but the money, you might want to check that attic.” *Id.*  
16 at 59.

17 The Defendants then discussed their plan for robbing the stash house. Their initial plan  
18 was that White, Knapp, and Williams would force their way into the home as Larios was leaving.  
19 *Id.* at 27-30. Williams, however, suggested that if Larios could not leave the door unlocked as he  
20 went in, “then we should probably try to catch [Larios] as [he] coming out.” *Id.* at 21. He asked  
21 Larios how long he usually spent inside, and when Larios responded five or ten minutes,  
22 Williams said while Larios was inside, the Defendants would “need to just rush . . . . we  
23 probably might make you back up . . . cause then that’s when it’s gonna look like real.”  
24 Williams also observed that “if we go in there while you in there, you let the door unlocked that  
25 could . . . look suspicious.” *Id.*

26 Williams also asked Larios to try to get the armed Mexican dude to go with him to the  
27 door so that “the person who has the gun” was not in the back room “with time to prepare  
28 himself.” *Id.* at 26. He also attempted to confirm that only one of the stash house guards was

1 armed, asking “are you sure that the other guy in the other room . . . like when he goes to the  
2 other room (inaudible) pistol in there” *Id.* at 29. Larios confirmed that he had never seen the  
3 guy in the back room with a gun. *Id.* In addition, Williams agreed that the drug proceeds could  
4 not be sold in Las Vegas, and that he would go the same route as White to sell the drugs. *Id.* at  
5 37, 38.

6 Williams also coached Larios in playing the victim realistically, stating “you want to sell  
7 it the best you can. Back up slowly . . . keep your eyes on us.” *Id.* at 44-45. He discussed the  
8 logistics of getting the drugs and patting down the people in the home, indicating everyone  
9 should remain calm and stating “we came here for one thing and one thing only.” *Id.* at 45.  
10 Williams indicated the robbery should occur quickly, “wham, bam, thank you ma’am,” and the  
11 Defendants should wear “beanies” over their faces, and they could purchase them at the dollar  
12 store. *Id.* at 60.

13 ATF conducted a records check after meeting Knapp and Williams and learned that  
14 Williams had a 2008 Nevada felony conviction for burglary and felon in possession of a firearm.  
15 Knapp’s record showed a 2007 California conviction for participating in a criminal street  
16 gang/carrying a concealed firearm, and a 2010 conviction for inflicting corporal injury on a  
17 spouse.

18 **D. March 2, 2014, Meeting.**

19 On March 2, 2014, Knapp met with Williams, White, Larios, and undercover ATF  
20 Special Agent John Carr at the South Point Casino in Las Vegas, Nevada. The first part of the  
21 meeting occurred on the casino floor, and then everyone went to a hotel room rigged with  
22 undercover cameras to talk with Larios’ “big homie,” Special Agent Carr. Carr had everyone sit  
23 down and stated that he had come from Los Angeles to Las Vegas “to do some work” and  
24 wanted “to make sure I feel good about this and number one I want to make sure nothing  
25 happens to [Larios].” *See* Transcript of March 2, 2014, Meeting, attached as Exhibit 4 to  
26 government’s Response at 9. Carr also stated that he was concerned about the police, someone  
27 talking, and having the robbery “come back on us.” *Id.* White responded that he had been  
28 around since twelve, and had “prison time up under me,” but no “dirty jacket.” *Id.* White also

1 stated that he was cautious by nature and that was why he had “made it this far.” *Id.* at 10. Carr  
2 stated that he was there to “make sure . . . everything goes cool.” *Id.*

3 Carr stated that the proceeds of the robbery would be divided equally, and Knapp  
4 responded “everything equal.” *Id.* White discussed what he had “planned out in [his] brain”  
5 about how to do the robbery and have his “two brothers” get the drop on the dealer as soon as the  
6 dealer came to the door. *Id.* at 11. Carr offered to get a rental car the Defendants could use,  
7 stating he “got this female that works at a rental car company that lets us take cars off the lot  
8 with no papers . . . . I can get you guys one just so that you don’t got to drive your own fucking  
9 ride.” *Id.* at 14. Knapp responded, “That’s what I’m talking about. We need one.” *Id.*  
10 Williams too indicated that he was concerned about the car, and he “appreciate[d] the fact that  
11 Carr mentioned the rental car. *Id.* at 19. White assured Carr, “This one gonna . . . gonna go  
12 perfect. Keep me in mind for the future.” *Id.* at 15. Carr responded that if everything “works  
13 out clean, then everything is good,” he “definitely . . . got some work down the road.” *Id.* at 16.

14 Williams stated that he had been thinking about the plan for a couple of days and was  
15 “kinda low key losing sleep over it.” *Id.* at 17. Williams said that he liked everything to “be  
16 right” and was concerned that “the other dude doesn’t have something in the room waiting, you  
17 know.” *Id.* He asked whether Carr and Larios were sure “nobody else is watching [the stash  
18 house].” *Id.* at 32. White told Carr that Larios “may have to get hit in the stomach.” *Id.* at 18.  
19 Carr responded that Larios was “gonna have to play a role.” *Id.* Williams and Knapp both stated  
20 that the scheme involved acting, playing a role, with Williams instructing, “You have to sell that  
21 shit. . . . selling it good.” *Id.* at 18, 21. Carr, Larios, and all three Defendants had an extended  
22 discussion about making it look realistic so that Larios was not implicated. For example,  
23 Williams stated that the point of entry would be when Larios was getting ready to leave because  
24 “it looked more realistic like that.” *Id.* at 22.

25 Carr then asked how the Defendants planned on getting rid of the narcotics they were  
26 going to get. *Id.* at 24. Carr said that the bricks were packaged in a certain way and would need  
27 to be “broken down” and repackaged. *Id.* at 24. Williams admitted “I thought about that too . . .  
28 you have to repackage it . . . if you try to sell it.” *Id.* at 25. White, Williams, and Knapp

1 discussed their plan to sell their part in Texas because in Las Vegas, as Williams stated, “Some  
2 people I don’t even know because everything will come back to you.” *Id.* at 24-25. Carr told the  
3 Defendants that the “crystal” was one hundred percent pure and that the cocaine was “top of the  
4 line.” *Id.* at 25.

5 Williams asked if Carr would provide the rental car the day before the planned robbery.  
6 *Id.* at 26-27. Carr responded that he could not. *Id.* at 27. Williams asked if Carr was “sure it’s  
7 covered?” Carr responded, “I will have that, guaranteed.” Carr asked what type of vehicle the  
8 Defendants wanted, and Williams responded “an SUV with some tints.” *Id.*

9 The discussion shifted to the cell phone the Defendants would use for the robbery.  
10 Williams told Larios not to save the number in Larios’ cell phone, but to write it down in case  
11 someone took Larios’ phone and tried to look through it. *Id.* at 28. Larios stated “that’s smart.”  
12 *Id.* at 28-29.

13 Carr told the Defendants he wanted them on time, ready to roll, “tooled up, ready to do  
14 your thing.” *Id.* at 30. Carr and Larios stressed that it was important to be on time so everything  
15 would “look like normal,” and if Larios was late, the dealers would “close up.” *Id.* at 31.  
16 Williams asked Larios and Carr whether they were sure no one would be watching the house. *Id.*  
17 at 32. Carr said no one watched the house, explaining that the drug dealers were smart and were  
18 connected with a real estate company that told them about vacant houses and different spots for  
19 their deals. *Id.* at 32-33.

20 Carr guaranteed that he would call the Defendants on Wednesday. *Id.* at 36-37. White  
21 stated, “So look, man, Tuesday you all gonna be in my crib.” *Id.* at 37. Williams asked what  
22 time Carr was going to get the rental car. *Id.* Carr said he would get the car and that everyone  
23 should meet a little before seven. *Id.* Carr said he felt good about everything. *Id.* at 38.  
24 Williams responded, “I’m not all smiley today, you know.” *Id.* at 38. Knapp said, “You got our  
25 . . . you got our word for everything.” White said that he was a “longevity-type person” and was  
26 born and raised in Carr’s hometown of Los Angeles. The meeting closed with White stating it  
27 was nice meeting Carr. *Id.* at 40. In response to Larios’ comment “We can do this, man,” Knapp  
28 said, “Yeah. We’re gonna do this. We’re good.” *Id.* White told Larios, “I’m gonna use me for

1 you. So if I give you a cool looking body shot, they gonna . . . they gonna be like damn that  
2 hurt.” *Id.* at 41.

3 **E. March 5, 2014, Meeting and Arrest.**

4 Larios called White on March 5, 2014. White, Williams, and Knapp arrived at a gas  
5 station in a car driven by a woman to meet Larios. The female driver followed Larios to a  
6 warehouse on East Post Road in Las Vegas where the Defendants were dropped off, and the  
7 woman left in the car. The meeting at the warehouse was recorded. *See* Transcript of March 5,  
8 Meeting, attached as Exhibit 5 to the government’s Response.

9 Carr said his first concern was to ensure nothing happened to Larios. *Id.* at 2-3.  
10 Williams responded, “Yeah,” and White agreed, stating, “That’s the first concern.” *Id.* at 3.  
11 White said he had done a lot of talking with Knapp and Williams and had figured out more  
12 details of what they were going to do. *Id.* The plan was that when Larios said his goodbyes and  
13 opened the door, “we coming in.” *Id.* Williams stated, “We thought about it . . . and we know  
14 we always thought actually running in my head about leaving the door unlocked and that might  
15 fall back on him.” *Id.* at 4. White and Williams both said that they wanted the “gunman up  
16 close and personal.” *Id.* Carr responded that that made him feel better, and Knapp asked, “We  
17 good?” *Id.* Larios then asked what the Defendants would point at him because he did not want  
18 to be surprised. *Id.* at 4-5.

19 Williams and Knapp said they had zip ties. Larios stated he just wanted “to make sure  
20 you came prepared, dude.” *Id.* at 5. White said he had a Mossberg, and “they got their little  
21 hand tools.” *Id.* Knapp said he had a hand tool in his pocket. Williams said, “Mine’s going in  
22 my pants.” *Id.* at 6. Carr stated, “Anyone who’s got any issues or concerns now is the time to  
23 put it out.” *Id.* Williams responded, “It’s show time. We wouldn’t be here.” *Id.* Knapp  
24 responded, “It’s show time.” *Id.* White responded, “I got my ass here.” *Id.* Williams added,  
25 “We’re ready.” *Id.* At this point, the Defendants were arrested.

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1     **II.     Applicable Law & Analysis.**

2             **A.     Request for Evidentiary Hearing.**

3             The caption of the Motion to Dismiss requests an evidentiary hearing. However, the  
4     motion itself does not provide an offer of proof or articulate what Williams expects an  
5     evidentiary hearing would establish if one was conducted. The Ninth Circuit has held that an  
6     evidentiary hearing is necessary where a defendant alleges facts with “sufficient definiteness,  
7     clarity, and specificity” to enable the court to conclude that contested issues of fact exist. *See*  
8     *United States v. Howell*, 231 F.3d 615, 620 (9th Cir. 2000) (internal citations omitted). The court  
9     need not hold a hearing on a defendant’s pretrial motion “merely because a defendant wants one.  
10    Rather, the defendant must demonstrate that a significant disputed factual issue exists such that a  
11    hearing is required.” *Id.* (internal citation omitted). The determination of whether an evidentiary  
12    hearing is appropriate rests in the reasoned discretion of the district court. *See United States v.*  
13    *Santora*, 600 F.2d 1317, 1320 (9th Cir.) *amended by* 609 F.2d 433 (9th Cir. 1979).

14            The government attached the transcripts of the February 25, 2014, and March 2, 2014  
15    meetings, along with several other exhibits to its Response. Williams has not challenged the  
16    accuracy of the transcripts, disputed their authenticity, or otherwise established a contested issue  
17    of fact which warrants an evidentiary hearing. The court will therefore deny Williams’ request  
18    for an evidentiary hearing.

19            Williams seeks dismissal of the indictment for outrageous government conduct under the  
20    due process clause of the Fifth Amendment, or alternatively, under the court’s inherent  
21    supervisory powers.

22            **B.     Outrageous Government Conduct.**

23            In *United States v. Russell*, 411 U.S. 423, 431-32 (1973), the Supreme Court held that  
24    outrageous government conduct occurs when the actions of law enforcement officers or  
25    informants are “so outrageous that due process principles would absolutely bar the government  
26    from invoking judicial processes to obtain a conviction.” A dismissal of an indictment for  
27    outrageous government conduct is rooted in the due process clause of the Fifth Amendment of

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1 the Constitution which provides, “no person shall . . . be deprived of life, liberty, or property  
2 without due process of law.” U.S. Const. amend. V.

3 The Ninth Circuit has held that dismissal of an indictment for outrageous government  
4 conduct is “limited to extreme cases” in which the defendant can demonstrate that the  
5 government’s conduct “violates fundamental fairness” and is “so grossly shocking and so  
6 outrageous as to violate the universal sense of justice.” *United States v. Stinson*, 647 F.3d 1196,  
7 1209 (9th Cir. 2011). This is an “extremely high standard.” *United States v. Black*, 733 F.3d  
8 294, 302, (citing *United States v. Garza-Juarez*, 992 F.2d 896, 904 (9th Cir. 1993)). There are  
9 only two federal appellate court decisions which have reversed convictions for outrageous  
10 government conduct. *Black*, 733 F.3d at 302 (citing *United States v. Twigg*, 588 F.2d 373 (3rd  
11 Cir. 1978) and *Greene v. United States*, 454 F.2d 783 (9th Cir. 1971)).

12 Because there is no bright line rule establishing when law enforcement’s conduct goes  
13 from acceptable to outrageous, each case must be resolved on its own facts, considering the  
14 totality of the circumstances. *Id.* at 302, 304. The Ninth Circuit’s decisions prior to *Black*  
15 provided some guidance about when law enforcement conduct crosses the line between  
16 acceptable and outrageous. In *United States v. Williams*, 547 F.3d 1187, 1199 (9th Cir. 2008),  
17 the Ninth Circuit held that it was outrageous for government agents to engineer and direct a  
18 criminal enterprise from start to finish (internal quotations omitted). It is outrageous government  
19 conduct to use “excessive physical or mental coercion” to convince an individual to commit a  
20 crime. *United States v. McClelland*, 72 F.3d 717, 721 (9th Cir. 1995). It is outrageous for the  
21 government to generate new crimes “merely for the sake of pressing criminal charges.” *United*  
22 *States v. Emmert*, 829 F.2d 805, 812 (9th Cir. 1987). It is not outrageous for law enforcement to  
23 infiltrate a criminal organization, approach people who are already involved in or contemplating  
24 a criminal act, or to provide necessary items to a conspiracy. *United States v. So*, 755 F.2d 1350,  
25 1353 (9th Cir. 1985). It is also not outrageous for the government to “use artifice and stratagem  
26 to ferret out criminal activity.” *United States v. Bogart*, 729 F.2d 1428, 1438.

27 Both sides rely heavily on the Ninth Circuit’s 2013 decision in *Black* to support their  
28 arguments. There, the Ninth Circuit found that the reverse sting challenged on appeal fell



1 “within the bounds of law enforcement tactics that have been held reasonable.” 733 F.3d at 302.  
2 A “reverse sting” is a term applied when the government initiates the criminal conduct, setting  
3 up a fictitious crime, and arresting criminals as they begin to carry out what they believe is a real  
4 crime. *Id.* at 298 & n.1.

5 Although the court upheld the conviction in *Black*, it was troubled by two aspects of the  
6 fictional sting operation and how it came about in the first place. First, the Court of Appeals was  
7 concerned that the defendants were convicted of conspiracy to possess cocaine with intent to  
8 distribute and use of firearms in furtherance of a drug trafficking crime which resulted from an  
9 operation created and staged by ATF. *Id.* at 302-303. An ATF undercover officer used a CI and  
10 invented the entire scenario, the need for weapons and a “crew,” and determined the amount of  
11 cocaine involved. The court found that the facts of the case suggested that the defendants were  
12 responding to the government’s script, and that their only overt actions involved showing up at  
13 meetings, arriving at a parking lot with four hidden, loaded weapons, and driving to the storage  
14 warehouse where they were arrested. The defendants’ actions corroborated that they intended to  
15 carry out these robberies, but also that they were responding to the scheme created by the  
16 government.

17 The *Black* court’s second concern with the reverse sting operation was how the  
18 government recruited the defendants. ATF did not infiltrate a suspected crew of home invasion  
19 robbers or seduce persons known to have actually engaged in these types of crimes. Rather, the  
20 evidentiary hearing established that ATF used the CI to find individuals willing to commit a  
21 home invasion. The CI testified he carried out his mission by going to bars in “bad” areas where  
22 persons engaged in criminal activity were likely to gather. On one visit to a bar, the CI  
23 approached a man to see if he would be interested in doing a home invasion robbery. The man  
24 said that he was not interested, but somebody he knew would be. The man introduced the CI to  
25 one of the defendants. The CI told the defendant that he had a friend with information about a  
26 house, possibly with some drugs in it, and asked whether the defendant would be interested in  
27 putting a crew together to rob the house. The defendant agreed, and the CI set up a meeting with  
28 the undercover ATF agent.

1 In a subsequent meeting with the defendant, CI and undercover agent, the undercover  
2 agent gave a cover story that he was a cocaine courier who transported drugs for a group of  
3 Mexican dealers and wasn't happy with the pay he was receiving. The undercover agent stated  
4 he wanted to rob the Mexican drug dealers, described the modus operandi, told the defendant  
5 that at the beginning or end of each month he would receive a call informing him the drugs were  
6 ready for transportation at a particular house, and that he would only have fifteen minutes to pick  
7 up the drugs, or the dealers would move to a new location. The undercover agent stated he  
8 would enter the house, see two individuals, at least one of two would be armed, and that one of  
9 the individuals would go to a back room to obtain six or seven kilograms of cocaine, give the  
10 drugs to the undercover, and tell him where to take the drugs. The undercover agent told the  
11 defendant that each time he did this, he could see anywhere from twenty-two to thirty-nine  
12 kilograms of cocaine in the living room and did not know what might be in the back room which  
13 contained more cocaine.

14 The undercover emphasized that he wanted to make sure that people the defendants  
15 involved in the proposed robbery had "the balls to go do it because this ain't no easy lick." At an  
16 evidentiary hearing, the undercover officer testified he chose details that demonstrated a  
17 particularly high potential for danger and violence to ensure that only individuals who "are truly  
18 involved in this type of crime" would agree to it, and those who are not would back out. The  
19 defendant told the undercover he had "goons" willing to commit robbery and murder and asked  
20 the undercover on numerous occasions how many "goons we're gonna need." Each time, the  
21 undercover stated he did not know and the defendant should decide.

22 The defendant bragged about the criminal history and acumen of his "goons" to commit  
23 crimes of this nature and subsequently introduced his co-defendants to the CI and undercover  
24 agent in a meeting ten days later. The undercover agent repeated his cover story about being a  
25 disgruntled drug courier and his plans to rob a fictitious stash house. Defendant Black proposed  
26 several scenarios about how to rob the stash house, mentioned the possibility of taking an  
27 occupant to the back room as a hostage, and told the undercover that he "got this shit down to a  
28 science, man."

1           The initial target told the undercover that he and Black needed guns for the robbery, but  
2 they did not have any. The undercover officer stated he did not either, and that if he had, he  
3 would do the robbery himself. Black eventually said that getting guns would be no problem.  
4 The undercover officer questioned Black and the individual who recruited him about their  
5 intention to do the robbery without other crew members, telling them that the men in the stash  
6 house were not going to just give the drugs to them. Black and the individual who recruited him  
7 insisted that having a small crew would be better for taking a stash house by surprise, but  
8 eventually said they would probably bring in one or more crew members. At the subsequent  
9 meeting, additional crew members were introduced to the undercover.

10           The additional crew members came to the third meeting with the undercover agent. The  
11 undercover repeated his cover story and asked one of the new defendant crew members how he  
12 wanted to do the robbery, and the defendant responded, "You tell me, dude. I mean, this is your  
13 gig. I mean, I don't know about this shit."

14           At a meeting set with the undercover agent for the following day, the group did not show  
15 up at the time scheduled. The undercover officer testified he felt he was being surveilled.  
16 Twenty-five minutes after the scheduled meeting, the defendants pulled up in two vehicles with  
17 another individual who was introduced as a driver. The undercover told the crew he had rented a  
18 warehouse unit nearby where they should deliver his portion of the cocaine from the stash house  
19 and asked them to follow him there. When the group arrived at the warehouse, they were  
20 arrested. A search of the vehicles uncovered four loaded weapons in a hidden compartment.

21           The individual who initially introduced the defendants to the undercover agent  
22 cooperated with the government and testified against his co-defendants at trial. The defendants  
23 were convicted and appealed, arguing the government's conduct in the case was so outrageous  
24 that it violated the due process clause of the Fifth Amendment. Although the Ninth Circuit was  
25 troubled by aspects of the government's investigation and tactics, it ultimately upheld the  
26 convictions, holding that the government's reverse sting operation did not amount to outrageous  
27 government conduct.

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1 In upholding the convictions, the Ninth Circuit applied the following factors its prior  
2 cases had found relevant to determine whether the government conduct was outrageous: (1)  
3 known criminal characteristics of the defendants; (2) individualized suspicion of the defendants;  
4 (3) the government's role in creating the crime of conviction; (4) the government's  
5 encouragement of the defendants to commit the offense conduct; (5) the nature of the  
6 government's participation in the offense conduct; and (6) the nature of the crime being pursued  
7 and the necessity for the actions taken in light of the nature of the criminal enterprise at issue.  
8 *See Black*, 733 F.3d at 303. However, the Ninth Circuit stated that these factors were not a  
9 "formulistic checklist," but a means to focus the court's "analysis of the totality of the  
10 circumstances." *Id.* at 304.

11 The Ninth Circuit reviews a district court's decision to grant or deny a motion to dismiss  
12 an indictment for outrageous government conduct de novo. *Black*, 733 F.3d at 301. In  
13 conducting its review, the Ninth Circuit views the evidence in the light most favorable to the  
14 government and accepts the district court's factual findings unless they are clearly erroneous. *Id.*

15 Applying these factors to Williams' Motion to Dismiss, the court finds that under the  
16 totality of the circumstances, the government's conduct is not so outrageous that due process  
17 principles require dismissal of the Indictment. For the reasons discussed below, the court finds  
18 that this is not such an extreme case requiring dismissal. The government did not engage in  
19 conduct which violated fundamental fairness or that was so shocking and outrageous as to violate  
20 the universal sense of justice.

### 21 **1. Individualized Suspicion & Known Criminal Characteristics.**

22 It is undisputed that the initial investigation that led to this undercover reverse sting  
23 operation stems from an investigation of White for selling firearms, including stolen firearms, to  
24 an ATF CI, and on the last two occasions, to the CI and TFO Larios. White has not moved to  
25 dismiss the Indictment for outrageous government conduct. There is no question that the  
26 government had individualized suspicion about White's criminal activities and was aware of  
27 White's criminal record before the reverse sting was initiated.

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1           The government alleges, and Williams does not dispute, that on January 6, 2014, the CI  
2 told ATF agents that the CI spoke to White on January 2, 2014, and White told the CI he and a  
3 second individual (with multiple felony convictions for robbery, second degree murder, and  
4 trafficking a controlled substance) had participated in an armed home invasion of a local  
5 methamphetamine dealer. During the January 2, 2014, meeting with the CI, White stated that the  
6 victim of the home invasion robbery revealed where his proceeds were hidden after the  
7 perpetrators threatened to shoot his dog. At the January 2, 2014, meeting, the CI stated that  
8 White had a large amount of money that White said was his share of the home invasion robbery  
9 of the methamphetamine dealer. White also stated that the second individual at the meeting  
10 participated in the home invasion and claimed he had “youngsters” he called “rah rahs” available  
11 to handle any “business” the CI might have.

12           The CI reported this January 2, 2014, contact with White and the unidentified individual  
13 to his ATF handler on January 6, 2014. On January 10, 2014, the CI and Larios conducted a  
14 controlled buy of stolen firearms from White. After the transaction was completed, ATF agents  
15 learned that a stolen handgun White sold belonged to a victim of a 2008 homicide in Phoenix,  
16 Arizona. At a subsequent meeting on January 28, 2014, the CI and Larios made another  
17 controlled purchase of a handgun and a 12 gauge shotgun from White. The transcript of the  
18 recorded meeting confirms that Larios told White he had some “heavy lifting” for White. White  
19 responded he was in the “construction business.” Larios stated he needed the “NFL” not “junior  
20 varsity” players, and White responded “my dudes are Hall of Fame.” This was the meeting that  
21 resulted in the ATF’s initiation of the reverse sting operation for which Williams and his co-  
22 Defendants were indicted in this case.

23           By this time, White had sold a number of firearms, including stolen firearms, to the CI.  
24 White also sold handguns to the CI and Larios at the January 10 and 28, 2014, meetings. After  
25 the January 10th meeting, ATF investigation revealed that one of the firearms White sold had  
26 belonged to a victim of a 2008 homicide in Phoenix, Arizona. This information came on the  
27 heels of the CI reporting to ATF that White and another unidentified individual claimed to have

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1 participated in a home invasion robbery of a stash house, provided details about the robbery, and  
2 White had flashed a wad of cash he said was his share of the robbery's proceeds.

3 It is undisputed that the government did not have individualized suspicion or know of the  
4 criminal history of Knapp or Williams until White brought them to the February 25, 2014,  
5 meeting with the CI and Larios. However, it was White, not ATF or its CI, who recruited Knapp  
6 and Williams. At the time White recruited his co-Defendants, White had committed a number of  
7 crimes, ATF had ample individualized suspicion that White was willing to commit home  
8 invasion robberies of a stash house, and was aware of White's criminal history.

9 The government does not need individualized suspicion of a defendant's wrongdoing  
10 before conducting an undercover investigation, but it is "an important consideration." *Black*, 733  
11 F.3d at 304 (citing *United States v. Luttrell*, 923 F.2d 764 (9th Cir. 1991) (en banc)). This factor  
12 is closely related to whether a defendant had a criminal background or propensity the  
13 government knew about when it initiated its sting operation. *Id.* Here, the government concedes  
14 that it had no knowledge of Williams' criminal history until after White brought him to the  
15 February 25, 2014, meeting. ATF was aware that White had committed multiple felonies in  
16 selling firearms and stolen firearms, was a convicted felon, had reported that he had recently  
17 conducted a stash house home invasion robbery, and had a crew willing to participate in home  
18 invasion robberies. The court finds that although the ATF lacked individualized suspicion of  
19 Knapp or Williams, their appearance and statements at the February 25, 2014, meeting created  
20 individualized suspicion.

21 Additionally, in *Black*, the Ninth Circuit found that although the government's lack of  
22 individualized suspicion or knowledge of defendants' criminal characteristics weighed in favor  
23 of the defendants, their repeated representations that they had engaged in related criminal activity  
24 in the past "quickly supplied reasons to suspect they were likely to get involved in stash house  
25 robberies." *Id.* at 307. Here, although the government had no information about Knapp or  
26 Williams until the February 25, 2014, meeting, both stated in recorded conversations that they  
27 had done home invasion robberies in the past, and that Knapp, Williams, and White had already

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1 begun planning how to do the stash house robbery Larios proposed before they met with Larios  
2 that day.

3 The Ninth Circuit found that as long as the investigation was “initiated and performed  
4 tolerably as a whole, it would undermine law enforcement’s ability to investigate and apprehend  
5 criminals if its otherwise acceptable conduct became outrageous merely because an individual  
6 with no known criminal history . . . joined the criminal enterprise at the behest of codefendants.”  
7 *Id.* at 308 n.11. The government has now produced the transcripts of the recorded undercover  
8 meetings, and Williams does not dispute their authenticity, genuineness, or accuracy. The  
9 transcripts show that Williams was an eager participant in planning the fictional stash house  
10 robbery, and once the government set the bait, he expressed a willingness to participate and  
11 discussed his experience in this type of crime.

12 After Knapp and Williams were identified at the February 25, 2014, meeting, ATF  
13 conducted criminal records checks. The criminal records checks reflected that both Defendants  
14 had convictions for violent felonies. ATF had also obtained a police report for the June 2013  
15 incident confirming White had been shot multiple times by men who thought White was  
16 planning to rob them. The report reflects that White stated that either Deondre Williams or “Jay  
17 Dubb” was with him at the time he was shot.

## 18 **2. ATF’s Role in Creating the Crime.**

19 In evaluating whether the government engaged in outrageous conduct under the due  
20 process clause of the Fifth Amendment, the court should also consider whether the government  
21 initially approached the defendant, or whether the defendant approached the government agent.  
22 *Id.* Additionally, whether the government proposed a criminal enterprise or merely attached  
23 itself to one that was already established and ongoing is a relevant factor. *Id.* Like the stash  
24 house robbery scheme in *Black*, the stash house robbery scheme in this case was entirely the  
25 government’s creation. In this case, it is undisputed that the ATF did not initiate its reverse sting  
26 investigation until after White told the CI that he and another individual had recently committed  
27 a home invasion robbery and that White was interested in putting together a crew to do future

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1 home invasion robberies. Williams does not dispute that the CI told ATF that White claimed he  
2 had individuals willing to commit home invasion robberies and murder if necessary.

3 This is not a case of the government's CI trawling bars in impoverished minority  
4 neighborhoods to see if he could get individuals interested in doing home invasion robberies for  
5 untold riches to take the bait. The undercover sting operation was only initiated after White told  
6 the CI who told his ATF handlers that White had recently claimed to have committed home  
7 invasion robberies and was interested in putting a crew together to do future home invasion  
8 robberies. Before the ATF initiated its reverse sting operation, White made a number of  
9 controlled buys of firearms and stolen firearms to the CI and two controlled buys to the CI with  
10 the ATF undercover officer present. It was only after White had engaged in multiple felony  
11 transactions, including selling a stolen firearm belonging to a victim of a 2008 Arizona homicide,  
12 that a meeting was arranged with White, the CI, and Larios. It was during this meeting that the  
13 undercover asked if White was interested in a "heavy lifting" home invasion-type robbery of a  
14 stash house. The transcript of the recorded meeting reflects that White enthusiastically embraced  
15 the proposal and boasted that he had a trusted experienced crew also willing to participate.

16 The recorded conversations indicate that all three Defendants were enthusiastic, willing  
17 participants who boasted about their prior escapades, including their acumen and prior  
18 experience in home invasion-type robberies and were willing to plan and participate in the  
19 crimes for which they were eventually indicted.

### 20 **3. ATF's Encouragement of Defendants.**

21 The extent to which the government encouraged a defendant to participate in the charged  
22 conduct is important, and "mere encouragement" is less likely to qualify as "outrageous conduct"  
23 than pressure or coercion. *See Black*, 733 F.3d at 308. Williams contends the government did  
24 more than merely encourage him to commit the crime when the undercover agents asked  
25 Williams whether he was "down for it," inquiring whether Williams had "tools" for the job,  
26 stating they needed to find the "right guys" to do the job, agreeing to split the proceeds down the  
27 middle, telling Williams the home invasion was a "try out," and if all went well, Williams would  
28 be kept on "retainer."



1           However, the court's review of the transcripts does establish that the ATF engaged in  
2           outrageous government conduct which threatened or coerced Williams to engage in a fictional  
3           stash house home invasion robbery. The government certainly set the bait by proposing the stash  
4           house robbery and made it enticing with the quantity of drugs it claimed was there and the lax  
5           security of the two Mexican dudes, one of whom was armed and would admit a trusted courier.  
6           However, Larios also told the Defendants he had never seen any cash in the drug house. The  
7           transcripts show that the Defendants were not cajoled, pressured, harassed, or coerced into going  
8           along. In fact, they were told more than once that they could back out if they wanted. They all  
9           accepted the plan when it was proposed, professed a willingness to do whatever was necessary,  
10          said they had the tools, would use zip ties to take the occupants hostage, and would give Larios a  
11          body or stomach shot to make sure that he was not suspected of participation in the robbery.  
12          The transcripts reflect that the Defendants were eager and willing participants who eagerly  
13          jumped at the opportunity.

#### 14                           **4.       ATF's Participation in the Crime.**

15          In considering the government's participation in offense conduct, the Ninth Circuit has  
16          instructed that the court should look at the duration, nature, and necessity of the government's  
17          participation. *Id.* Participation for a longer time is of greater concern than intermittent or short-  
18          term involvement. *Id.* (citing *Greene*, 454 F.2d at 786) (finding outrageous government conduct  
19          where government's participation was of "extremely long duration," lasting about three years).  
20          In examining the nature of the government's participation, the court looks at whether the  
21          government acted as a partner in the criminal activity or an observer of a defendant's criminal  
22          conduct, and the court also considers any "particularly offensive conduct" by the government  
23          during the course of the sting. *Id.* Lastly, in determining the necessity of the government's  
24          participation in the criminal enterprise, the court looks at whether a defendant would have had  
25          the technical expertise or resources necessary to commit the crime without the government's  
26          participation. *Id.* at 309.

27          Here, the reverse sting operation was not initiated until after White told the CI that he had  
28          recently conducted a home invasion robbery, displayed cash he reported came from the robbery,

1 and stated he wanted to put together a crew to perform future home invasion robberies. The  
2 entire reverse sting consisted of four meetings between February 12, 2014, and March 5, 2014,  
3 when all of the Defendants were arrested. Only White, the CI, and Larios were present at the  
4 February 12, 2014, meeting to discuss the “heavy lifting” home invasion robbery of a stash  
5 house. There were only two subsequent meetings on February 25, 2014, and March 2, 2014,  
6 before the final meeting, which resulted in the Defendants’ arrest on March 5, 2014. It is  
7 undisputed that the entire proposed home invasion robbery of a stash house occurred over a  
8 three-week period. The ATF investigation of Williams lasted a mere eight days between  
9 February 25, 2014, and March 5, 2014.

10 The ATF participated in the offense conduct by providing the basic scenario for the stash  
11 house robbery, but left it to the Defendants to decide how to execute it. The transcripts of the  
12 recorded meetings contain repeated statements by Carr that he did not want to tell them how to  
13 do their business, although Carr asked about their plan, whether they were prepared, and had the  
14 “tools” for the job. The transcripts do not support Williams claim that either ATF agent offered  
15 to supply weapons. To the contrary, all three Defendants professed to have the “tools” they  
16 needed. Carr and Larios also asked the Defendants how they planned on getting rid of the drugs  
17 indicating they had people if the Defendants did not. However, the Defendants said they had a  
18 way to get rid of the drugs and explained their plans to sell the drugs in Texas to avoid word  
19 getting out on the street about the stash house robbery. Carr did offer to get the Defendants a  
20 rental car they could use as a getaway vehicle so they would not have to drive one of their own  
21 vehicles. However, the rental car was not going to be provided until the day of the robbery.  
22 ATF also provided the warehouse serving as the staging area for the final meeting preceding the  
23 fictitious stash house robbery. Nothing in the record indicates whether the rental car was  
24 actually brought to the warehouse facility. The transcript of the March 5, 2014, final meeting  
25 and arrest does not indicate the car was discussed.

26 All three Defendants discussed their plan to gain entry to the stash house. Their initial  
27 plan was to have Larios leave the door unlocked after he was admitted, and the Defendants  
28 would rush in as Larios was leaving. However, after discussing it among themselves before the

1 next meeting with the CI and Larios, the Defendants decided it would be better to immediately  
2 “get the drop on” the men answering the door to “get up close and personal” and take immediate  
3 control of the situation as Larios entered the stash house. Williams said he thought that rushing  
4 the door as Larios was leaving would be less likely to implicate Larios than their initial plan to  
5 rush in as Larios entered. Williams made several comments about the point of entry, wanting  
6 everything to “go right” and the need to act and play a role. Williams provided the cell phone  
7 number at which Larios could contact them the day of the robbery and suggested that Larios  
8 write it down on paper rather than put it in his phone in case somebody took his phone and  
9 looked through it. White, Knapp, and Williams were intimately involved in planning the stash  
10 house robbery, and neither Larios or Carr offered direction about how to do the robbery or  
11 provided weapons to commit the offense. These facts weigh against finding outrageous  
12 government conduct.

### 13 **5. Nature of the Crime Being Investigated.**

14 Finally, the Ninth Circuit instructs lower courts to consider the need for the investigative  
15 technique used in light of the challenges of investigating and prosecuting the type of crime  
16 charged. *Id.* at 309. The *Black* court recognized that “stash house robberies are largely  
17 unreported crimes that pose a great risk of violence in residential communities.” *Id.* In addition,  
18 reverse sting operations were designed to avoid risks inherent to a real stash house robbery  
19 because the situation is controlled and unfolds just enough to capture people willing to commit  
20 such a crime without taking the final step of an actual home invasion. *Id.* These risks, however,  
21 do not give the government license to forego other techniques to identify and target suspects. *Id.*  
22 at 309-310. Additionally, courts must be “vigilant” that the government only “sets the bait” and  
23 does not “create criminal convictions by outrageous means.” *Id.* at 310.

24 Law enforcement conduct becomes unconstitutional when the government directs the  
25 criminal enterprise from “*start to finish*.” *Id.* (emphasis in original). Generating new crimes  
26 simply for the sake of pressing criminal charges is outrageous government conduct, “at least  
27 where the government essentially manufactured the crime.” *Id.* (citing *Emmert*, 892 F.2d at 812-  
28 13). The Ninth Circuit has observed that “it is difficult to discern the point of division at the

1 margins between police conduct that is just acceptable and that which goes a fraction too far.”  
2 *Id.* (citing *Bogart*, 783 F.2d at 1438).

3 The facts in this case are far less egregious than the facts the Ninth Circuit questioned,  
4 but nevertheless upheld, in *Black*, which involved a very similar ATF-initiated fictitious stash  
5 house robbery. This case does not involve a random, dragnet of poor neighborhoods looking for  
6 otherwise law-abiding young men living in poverty given an opportunity to commit a robbery  
7 with untold riches that would lift them out of their impoverished state. This reverse sting was  
8 only initiated after White bragged that he had recently committed a home invasion robbery of a  
9 methamphetamine dealer, discussed the details, flashed a wad of cash he said was his share of  
10 the proceeds, and stated he wanted to put together a crew to do future stash house robberies.  
11 When Knapp and Williams were introduced at the February 25, 2014, meeting, they both  
12 claimed that they had experience committing home invasion-type robberies and were eager to  
13 participate in the fictional crime that was described.

14 *Black* was a two-to-one decision. Judge Noonan authored a strong dissent critical of the  
15 reverse sting operation of an imaginary stash house that takes no real drugs off the streets. He  
16 found the fictional crime orchestrated by the ATF designed to tempt and trap criminals “conduct  
17 disgraceful to the federal government.” *Black*, 733 F.3d at 318. Judge Reinhardt authored a  
18 similarly strong dissent denying Black’s petition for rehearing en banc. *United States v. Black*,  
19 750 F.3d 1053 (9th Cir. 2014) (Reinhardt, J., dissenting). Even more recently, Judge Wright  
20 recently dismissed an indictment arising out of an ATF reverse sting operation remarkably close  
21 to the factual pattern in this case. *Hudson*, 3 F. Supp. 3d 772 (C.D. Cal. 2014). However, the  
22 majority opinion in *Black* is controlling and requires an analysis of the totality of the  
23 circumstances on a case-by-case basis. For the reasons stated, the court concludes that the  
24 totality of the circumstances presented here do not meet the extremely high standard set by the  
25 Ninth Circuit for dismissal of an indictment for outrageous government conduct.

26 **C. Dismissal Pursuant to the Court’s Supervisory Powers.**

27 The court may exercise its supervisory powers to dismiss an indictment where: (1) the  
28 government violated a defendant’s recognized right; (2) engaged in illegal conduct that must be

1 deterred; or (3) where there is evidence that a jury's verdict rested upon inappropriate  
2 considerations. *Id.* at 310 n.12 (citing *United States v. Ramirez*, 710 F.2d 535, 541 (9th Cir.  
3 1983)). The supervisory power provides authority for the courts to supervise their own affairs,  
4 not the affairs of the other branches of government. *See United States v. Sampson*, 927 F.2d  
5 1088, 1091 (9th Cir.1991). "Judicial integrity is rarely threatened significantly when executive  
6 action does not violate the Constitution, a federal statute, or a procedural rule." *United States v.*  
7 *Gatto*, 763 F.2d 1040, 1046 (9th Cir. 1985). Williams has not established that the government  
8 violated a recognized constitutional or statutory right, engaged in any illegal conduct that must  
9 be deterred, and as this case is in the pretrial stages, the third factor does not apply.

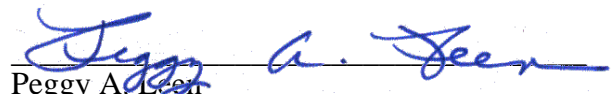
### 10 **III. Conclusion.**

11 The facts of this case are far less egregious than the law enforcement conduct the Ninth  
12 Circuit found troubling, but still upheld in *Black*. ATF did not use a CI to trawl bars in bad areas  
13 of town looking for impoverished individuals to tempt them to commit a crime that would net  
14 unimaginable immediate wealth. White was already under ATF's radar as a convicted felon who  
15 was selling multiple firearms, some of them stolen, to an ATF CI in controlled buy situations that  
16 were surveilled, monitored, and recorded. It was only after White claimed to have committed a  
17 recent armed home invasion of a local methamphetamine dealer and was looking to put a crew  
18 together to do more home invasion robberies that ATF lodged its reverse sting operation which  
19 netted White and his co-Defendants.

20 For the reasons stated,

21 **IT IS RECOMMENDED** that Williams' Motion to Dismiss (Dkt. #36) be **DENIED**.

22 Dated this 10th day of November, 2014.

23  
24   
25 Peggy A. Leen  
26 United States Magistrate Judge  
27  
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